



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/169830

PRELIMINARY RECITALS

Pursuant to a petition filed November 03, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA)/ BadgerCare Plus (BCP), a telephonic hearing was held on December 08, 2015.

The issue for determination is whether the Department correctly discontinued the petitioner's BCP effective October 1, 2015, due to excess income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Madeline Rice, Lead ESS

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County and has been a recipient of BCP as a household of 1.
2. On September 4, 2015 the FS agency received verification of petitioner's earned income. The paystubs were used to determine petitioner's household income, which showed that the petitioner

earned an average gross amount of \$633.67 every two weeks, for a total of \$1267.34. See Exhibit 3. The State Wage Record showed monthly earnings for petitioner in the 3rd quarter of 2015 as \$1228.64. See Exhibit 4.

3. On September 10, 2015, the FS agency issued written notice to the petitioner advising that her BCP would be discontinued effective October 1, 2015. The basis for discontinuance was being over the income limit.
4. On September 29, 2015 the agency received additional income verifications for petitioner and redetermined her income based on those verifications. The monthly income was then determined to be \$251.35 every two weeks, for a total of \$1005.40. The agency again issued notice to petitioner that she was still denied BCP due to income.

DISCUSSION

BCP is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The petitioner meets the nonfinancial eligibility tests for the program. The program's financial eligibility standards were changed by state law effective April 1, 2014, to exclude adults with adjusted gross household income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.471(4)(a)4; 2013 Wisconsin Act 116, §29, for effective date; *BadgerCare Plus Eligibility Handbook (BCPEH)*, §16.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The issue in this case is the financial eligibility for petitioner. The petitioner must pass an income test. The 100% FPL amount is \$980.83 monthly for a household of one. *Id.*, §50.1.

The agency calculated the lowest gross income amount for the petitioner at \$1005.40. From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #16 - #19 of the federal 1040A tax return, subject to modifications listed at 42 C.F.R. §435.603(e), which provide:

- (1) An amount received as a lump sum is counted as income only in the month received.
- (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income.
- (3) ***American Indian/Alaska Native exceptions.*** The following are excluded from income:
 - (i) Distributions from Alaska Native Corporations and Settlement Trusts;
 - (ii) Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;
 - (iii) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from—
 - (A) Rights of ownership or possession in any lands described in paragraph (e)(3)(ii) of this section; or
 - (B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
 - (iv) Distributions resulting from real property ownership interests related to natural resources and improvements—
 - (A) Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or
 - (B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests;
 - (v) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom;
 - (vi) Student financial assistance provided under the Bureau of Indian Affairs education programs.

The petitioner did not identify any of these adjusted gross income deductions as being applicable here and there is no evidence to believe they would. There is no exception under law for these circumstances. Rather, the petitioner is just over the income limit.

The petitioner's disagreement with the agency's action here is essentially that the income limit is too low. She wishes to pay whatever overage she has to the income limit in order to continue her BCP eligibility. While I certainly understand her argument, it is an argument based on equity or fairness, and it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. This office cannot create new eligibility requirements.

Based on the foregoing, I must find that the agency acted correctly. Petitioner can reapply for BCP at any time should her financial situation change, remembering that the agency looks at the last 30 days of earnings. The petitioner has not yet gone to the federal Marketplace website to buy subsidized private insurance. That website is www.healthcare.gov. The FFM offers private health insurance to individuals and families, as well as Advance Premium Tax Credits (APTCs). These tax credits lower premium payments for people between 100% and 400% of the FPL who are not eligible for BC+ MA, if they purchase private health insurance through the Marketplace. While current BC+ MAGI rules base eligibility on current monthly income, the FFM uses prospective annual income under "36B rules" to determine eligibility for a FFM subsidy. Thus, I also add that it is possible that a person could be below 100% of the FPL for subsidy purposes, but above 100% for BC+ purposes. To address this gap between MAGI rules and 36B rules, CMS has indicated that if a state denies someone based on current monthly income above 100% FPL, but the FFM subsequently determines that they are below 100% FPL based on 36B rules, the FFM will send this application to the state as a "gap filling" referral. States are then required to certify applicants for MA based on a monthly equivalent of their expected annual income. The whole point of gap filling is to catch individuals whose recent income is too high for BC+, but whose expected income will make them ineligible for Marketplace subsidies. Petitioner was reminded at hearing that she must apply to the FFM before a gap filling determination could be made.

CONCLUSIONS OF LAW

The agency correctly discontinued petitioner's BCP effective October 1, 2015 due to excess income.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of January, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 12, 2016.

Racine County Department of Human Services
Division of Health Care Access and Accountability